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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Human Rights field operation in Rwanda

Report of the United Nations High Commissioner for Human Rights

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Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 1997/66 of 16 April 1997, adopted without a vote, in which the Commission requested the High Commissioner "to report regularly on the activities and findings of the Human Rights Field Operation in Rwanda, and to make those reports widely and promptly available to both the Commission and the General Assembly". This report thus provides an overview of the human rights situation in Rwanda and the role of HRFOR since the High Commissioner's previous report to the Commission on Human Rights, submitted on 17 March 1997 (E/CN.4/1997/52).

2. From April to July 1994, Rwanda suffered the slaughter of between 500,000 and 1 million persons. The victims of this carnage were members of the Tutsi minority and moderate Hutus. The massive human rights violations were perpetrated in a pre-planned, organized and systematic manner by members of the former Government's armed forces and extremist Hutu militia throughout the country, and started within hours of the attack on the presidential aircraft on 6 April 1994, which took the lives of Juvénal Habyarimana, President of the Republic of Rwanda, and Cyprien Ntyamira, President of the Republic of Burundi, as well as ministers and staff of their respective entourages. The mass killings were condemned by all main organs of the United Nations, first and foremost by the Security Council. They were later qualified by the Commission of Experts on Rwanda 1/ in very clear and unambiguous terms as constituting "genocide" as defined in the 1948 Genocide Convention.

3. The genocide, civil war and atrocities perpetrated against the civilian population exacerbated the trauma, which was worsened further by the extensive destruction of the country's infrastructure. The new Government that took power in Rwanda in mid-July 1994 was able to halt the genocide. It was then faced with the immense task of restoring law and order, maintaining security in the country, fostering national reconciliation and reconstructing or rehabilitating the country's administration, public institutions, economy and social infrastructure.

4. HRFOR, which became operational in September 1994, was the key response of the High Commissioner for Human Rights to the catastrophe that occurred in Rwanda in 1994. Its creation was one of the responses taken by the United Nations, through its various agencies, in a multi-sectoral response to the immediate consequences of that catastrophe. In accordance with its mandate, HRFOR has carried out three main types of activities: (i) conducting the initial investigations into genocide and other serious violations of human rights and humanitarian law that took place during the armed conflict in Rwanda from April to July 1994; 2/ (ii) monitoring and reporting on the ongoing human rights situation; and (iii) implementing a broad-based programme of technical assistance and human rights promotional activities, ranging from projects for the rebuilding of the Rwandan justice system to human rights education and promotion. HRFOR has thus closely observed the evolution of the human rights situation during the three and a half years of its presence in Rwanda.

5. The human rights situation in Rwanda has been closely linked to the increasingly deteriorating security conditions, particularly in the north-western region of the country. Attacks against both civilian and military targets carried out by armed groups - made up of elements of the former Rwandese Armed Forces (ex-FAR) and former Interahamwe militia who participated in the genocide - have escalated in number and scale since January 1997, following the mass return of over 1 million Rwandan refugees from the former Zaire (now the Democratic Republic of the Congo) and the United Republic of Tanzania in late 1996 and early 1997. Attacks by armed groups have further intensified since October 1997. Victims have included genocide survivors, returnees who had taken refuge in neighbouring countries in 1959 (sometimes referred to as "old-caseload returnees") and Congolese Tutsi refugees. The Rwandese Patriotic Army (RPA) has responded with large-scale counter-insurgency operations, during which significant numbers of persons, including unarmed civilians, have been killed. The conflict in the north-west has led to the displacement of large numbers of civilians.

6. The detention situation, a result of the enormous challenge of bringing to justice the great number of Rwandan citizens presumed to have participated in the genocide, remains a most serious human rights problem facing Rwanda. In the period immediately following the genocide, there were only a few detention institutions left in a reasonable state to house the country's rapidly swelling number of detainees, the vast majority of whom were accused of genocide-related crimes. Local lock-up cells, known as cachots, existed in every commune in the country, but were originally designed as temporary holding centres and were never intended nor equipped to house numerous detainees for extended periods. Since the initial wave of post-genocide arrests, these local detention centres have been used to house tens of thousands of detainees throughout the country, many of whom have been in detention for one year or longer. As the number of genocide-related arrests has increased, particularly in the period following the mass return of the refugees, detention conditions have worsened correspondingly. In Rwanda's 19 central prisons, detention conditions are still characterized by severe overcrowding and consequent poor sanitation and lack of sufficient food and health care, which have sometimes resulted in the death of detainees. Ill-treatment of detainees by RPA, communal police and judicial personnel, particularly during interrogations, has been reported. As of December 1997, an estimated 126,212 detainees 3/ were being held in prisons, local detention centres and national gendarmerie brigades throughout the country whose combined estimated capacity, according to official sources, is 30,534. HRFOR estimates that case files formally bringing genocide charges have been opened for around 65 per cent of detainees.

7. The genocide and the ensuing war depleted the ranks of the judiciary and judicial police, rendering impossible the strict observance of the rules governing the powers of arrest and detention. Until 1997, the majority of arrests of genocide suspects were carried out by, or on the orders of, local administrative authorities and the military. However, with the deployment in mid-1997 of large numbers of newly trained judicial personnel, by December 1997 a greater proportion of arrests appear to have been carried out by legally mandated officials with provisional arrest warrants as specified under Rwandan law.

8. Although the Government has implemented measures designed to reduce the detainee population - such as allowing for the provisional release of elderly persons, the ill and minors, and increasing the practice of pre-trial hearings - the number of detainees awaiting trial remains very high. Notwithstanding the measures taken by the Government to increase the capacities of prosecution departments, it proved impossible to respect the 31 December 1997 deadline for regularizing the detention status of all persons detained since September 1996, as provided for by the 8 September 1996 Law Relating to Provisional Modifications of the Criminal Procedure Code. On 31 December 1997, a new law was published which extended the deadline for regularizing detention to 31 December 1999 for all persons in detention as of the publication date of the new law. The effect of this extension is that some detainees will have spent as much as five years in pre-trial detention without charge.

9. In this context, domestic trials of persons accused of genocide and crimes against humanity, which began on 27 December 1996, have continued, with progress noted in many areas, including increased legal representation of both defendants and civil claimants. As of 31 December, 322 persons had been tried on genocide charges in Rwandan courts. 4/

10. The increasing insecurity in the north-west and the restrictions on the movement of United Nations personnel have curtailed HRFOR investigations into alleged violations of human rights and humanitarian law in the very regions where they are most often reported. In March 1997, HRFOR restructured its offices following the killings of five of its staff members on 4 February 1997 and the subsequent tightening of United Nations security restrictions, which rendered certain regions off-limits and required the use of armed escorts to others. While the United Nations security guidelines continue to limit HRFOR's capacity to carry out on-site investigations in the north-west, HRFOR has increasingly resorted to "source monitoring" which relies on eyewitnesses and other sources knowledgeable about particular incidents who can be interviewed in other locations. Through this method, HRFOR has been able to complete investigations into several incidents and communicate the results to the Government of Rwanda.

11. Since 1996, RPA officers implicated in three separate military operations which resulted in the killing of civilians and eight RPA soldiers and officers accused of killing a national gendarmerie commander have been prosecuted before military courts. 1997 saw the establishment of the Military Prosecutor's Department (Auditorat Militaire), which was expected to increase the capacity of the RPA to carry out internal investigations and bring accused persons to trial. At the time of this report, investigations had not been completed by military officials and prosecutions had not been commenced before military courts in about a dozen cases well documented by HRFOR which involved significant abuses by members of the RPA.

I. CONTEXT OF THE HUMAN RIGHTS SITUATION IN NORTH-WESTERN RWANDA

12. In recent months, particularly since May 1997, the human rights situation has been closely linked to the deteriorating security situation in the north-west of the country, especially in Gisenyi and Ruhengeri prefectures, areas populated mainly by Hutus, and perceived by the current

Government as a bastion of genocidal forces. These two prefectures have been marked by escalating attacks perpetrated by armed groups comprising elements of the former Rwandese Armed Forces (ex-FAR) and Interahamwe militia. The deterioration in the security situation has been exacerbated by the apparent ease with which armed groups have gained access to weapons, despite the imposition of a Security Council embargo on the supply of arms in the region. The RPA has responded to such attacks with large-scale counter-insurgency operations. In this context, possible right-to-life violations under human rights and international humanitarian law have constituted the greatest number of incidents reported to HRFOR.

13. The local civilian population has often been caught between the armed groups and the RPA. This population suffers regularly from intimidation and threats by members of armed groups who exhort the population to join them, often through written tracts, and who at times abduct or kill alleged RPA informants. At the same time, this same population lives under strict control by local military authorities determined to prevent any collaboration with the armed groups. Significant numbers of civilians have been killed by the RPA during counter-insurgency operations following attacks by armed groups, which have sometimes been carried out with the participation or support of some elements of the local population.

14. During the evenings, members of armed groups often have gone to local houses throughout the region, including near the centres of Gisenyi and Ruhengeri towns, and demanded money or other goods from the inhabitants. Killings sometimes have occurred during these "visits", many of which are not reported because the survivors are afraid of further attack. One family's house was looted three times by armed groups. The head of the family was killed after he had decided, following the third attack, to report to the local authorities. During attacks on houses inhabited by Tutsis, entire families are sometimes killed. Sources have referred to the perpetrators as "insurgents" or "persons trained by insurgents".

15. The climate of fear and tension, in addition to the actual fighting, has resulted in the displacement of several thousand people. Many persons live on the move, some of them occasionally returning to their sectors of origin by day for food. Many of the displaced Tutsis now live in settlements, mostly in proximity to military camps, or close to the centres of Gisenyi and Ruhengeri towns.

16. Local military and administrative authorities have been engaged in some efforts to "sensitize" the local population toward reconciliation. They have also encouraged the local population not to collaborate with the armed groups. However, attacks by armed groups continue to occur with the participation of members of the population, including women and children. In some attacks, local civilians appear to be used as shields by the armed groups. At other times, they are encouraged or forced to kill Tutsis in a settlement, while the armed groups carry out an attack on a nearby military post. In cases where members of the population are not directly involved in an attack, they may be made aware of the attack before its occurrence and told to vacate the area so as to avoid a possible counter-insurgency operation. Consequently, some local military have expressed an attitude of deep suspicion with regard to the local population.

17. In certain cases, RPA soldiers have carried out revenge attacks, with or without the approval of their supervisors. Such revenge attacks have occurred after the RPA sustained a considerable number of casualties during armed confrontations, when RPA soldiers were ambushed and sometimes beheaded, and when family members of RPA soldiers were victims of attacks. In some cases, killings appear to be used to punish and/or deter the population from collaborating with the armed groups.

18. Some moderate Tutsis have expressed concern about how the RPA will solve the issue of alleged complicity on the part of the population without killing civilians, while some moderate Hutus state that it is difficult for members of the population to refuse food or shelter to militias of considerable size when they request or demand it. The local population's attitude toward these militias, they claim, is seen by authorities as supportive when in fact they are forced to collaborate.

19. As mentioned above, human rights violations in the region are often related to armed confrontations (prior, during and after) between the RPA and the armed groups. In addition, however, due to the ongoing insecurity, the pressure on the RPA to act on many different fronts, and, occasionally, the inability of the RPA to intervene, HRFOR has also noted incidents where Tutsi civilians carry out attacks in retaliation following attacks by members of armed groups or local civilians. Several houses of Hutus have been set on fire, with some of their inhabitants killed. In one other incident, local Tutsis set up a roadblock and killed Hutu passers-by. In some of these cases, the perpetrators were supported by local military, while in others, local soldiers intervened to stop the attacks.

II. OVERVIEW OF THE HUMAN RIGHTS SITUATION SINCE MARCH 1997

A. The human rights situation

20. As described above, the vast majority of incidents reported to HRFOR are possible right-to-life violations under human rights and international humanitarian law. The months of May and June saw a severe deterioration in the security and human rights situations in Ruhengeri prefecture. In August, the number of attacks by armed groups and subsequent RPA military operations increased sharply in Gisenyi prefecture and dropped in Ruhengeri prefecture. In September, the number of security incidents reported was relatively low. However, from October through early December, the frequency and scale of armed conflict in both Gisenyi and Ruhengeri prefectures rose dramatically, with a corresponding increase of reported possible human rights violations and breaches of international humanitarian law. The following cases illustrate these trends:

1. Overview of reported killings

21. From January through December 1997, 5/ HRFOR documented the killings of at least 5,952 persons, compared with 1,575 reported killings from January through December 1996. Of the 1997 figures, 3,140 killings were attributed to State agents, 6/ 1,536 to members of armed groups and 87 to members of the population carrying out "private justice". The perpetrators of the remaining 1,169 killings documented through December 1997 remained unknown. The highest

number of killings occurred during May and June when HRFOR received reports of 2,874 killings, 2,022 of which were reportedly carried out by the RPA during counter-insurgency operations in Ruhengeri prefecture.

2. Attacks by armed groups

22. Armed groups have carried out numerous attacks targeting genocide survivors and those associated with them, and persons who recently returned to Rwanda from exile in 1959 ("old-caseload returnees"). The 5,952 killings documented by the Field Operation from January through December include attacks in which at least 269 genocide survivors and old-caseload returnees were killed. For example, on 14 October, an attack on an old-caseload camp located in Mutura commune, Gisenyi prefecture, resulted in the killing of 41 old-caseload returnees. At least 18 old-caseload returnees were reportedly killed in Ruhengeri prefecture during September and October.

23. At least 457 Congolese refugees of Tutsi origin were also killed by armed groups in the two largest-scale attacks since the 1994 genocide, carried out on a United Nations HCR-administered camp located in Mudende sector, Mutura commune, northern Gisenyi prefecture. The first such attack took place on 22 August, claiming the lives of 131 Congolese Tutsi refugees and resulting in the wounding of 102 others. At least 326 Congolese Tutsi refugees were killed 7/ and a further 186 wounded in the second attack, which took place during the night of 10 to 11 December. In both attacks, the majority of the victims were women, children and the elderly.

24. The Field Operation also received reports of other attacks carried out by armed groups against Tutsis. In February and March 1997, in two separate incidents, unidentified individuals suspected to be insurgents attacked public transport buses, separated the passengers according to their presumed ethnic identity, and killed 17 passengers identified as Tutsis. Two separate ethnically motivated attacks 8/ on schools were reported in March and April. The first attack resulted in the killing of six pupils in a primary school in Kibuye prefecture, western Rwanda. A total of 17 female students were killed during the second attack, which took place in Gisenyi prefecture. In both cases, the perpetrators requested the students to identify themselves according to ethnic origin; when the students refused to do so, they were gunned down indiscriminately.

25. Communal offices and detention centres - in most cases situated adjacent to each other - have also been the targets of attacks by armed groups:

On 10 June in Gatonde and Nyamutera communes, Ruhengeri prefecture, resulting in the release of all detainees from both communal detention centres;

On 12 October, in Gatonde and Ndudu communes, Ruhengeri prefecture. In Gatonde commune, the armed group was composed of several hundred individuals, including women;

On 16 November, in Giciye commune eastern Gisenyi prefecture, resulting in the killing of 82 detainees and the freeing of 92 (according to local authorities, who attributed the killings to the attackers). Other

sources stated that between 50-200 members of the armed group were also killed and two RPA soldiers fatally wounded during the ensuing fighting;

On 1 December, in Rwerere commune, Gisenyi prefecture, resulting in the freeing of 103 detainees and the killing of 3, reportedly by the attackers, who also reportedly pillaged the house of the bourgmestre, killing a domestic worker;

On 3 December, in Bulinga commune, Gitarama prefecture, near the border with Gisenyi and Kibuye prefectures. The armed group reportedly consisted of around 300 individuals. Seven area residents and two communal police officers were killed in the ensuing fighting. The communal offices, a vehicle assigned to the commune, and the bourgmestre's residence were set on fire, and all 570 detainees were released from the communal detention centre. As of 13 December, around 60 per cent of the released detainees had returned to the cachot, apparently of their own accord;

On 9 December, in Ramba commune, Gisenyi prefecture, resulting in the killing of at least 50 persons, including 13 civilian authorities, and the release of all of the detainees from the communal detention centre;

On 10 December, in Satinsyi commune, Gisenyi Prefecture. The bourgmestre of the commune has been reported missing since the attack;

During the night of 10-11 December, in Mutura commune, Gisenyi prefecture, at about the same time as the attack on the Mudende refugee camp (see paragraph 25). According to local authorities, of the 427 detainees released in the attack, 20 were allegedly killed by the attackers;

On 15 December, in Nyarutovu commune, Ruhengeri prefecture, near the main Kigali-Ruhengeri road.

3. Killings by members of the Rwandese Patriotic Army during military operations

26. On 3 March, at least 137 civilians were killed during RPA operations in Kigombe commune, Ruhengeri prefecture. The RPA officer in command of the operations was arrested, along with five other officers; all six were tried before the military courts in November (see paragraph 42 below).

27. In May and June at least 2,022 persons were killed during RPA operations in several communes of Ruhengeri prefecture. This was by far the highest number of killings reported in any prefecture during any two-month period since the mass return of more than 1 million refugees from the Democratic Republic of the Congo (then Zaire) and the United Republic of Tanzania in November-December 1996. HRFOR gathered, analysed and cross-checked information that shows that a significant number of the persons killed during the RPA cordon-and-search operations included unarmed civilians, such as elderly persons, women and children.

28. On 1 August, representatives of the Government acknowledged that the security situation had seriously deteriorated since May. According to official sources, during the period from May to June, 200 to 300 civilians, 1,800 members of armed groups and 90 RPA soldiers, including 4 officers, were killed during confrontations in the course of counter-insurgency operations conducted in Ruhengeri prefecture by the RPA.

29. In August, there were several large-scale confrontations between armed groups and the RPA in Kanama and Rubavu communes, in Gisenyi prefecture, followed by cordon-and-search operations carried out by the RPA in those areas. Some of those killed in the course of the operations were allegedly members of armed groups who had targeted soldiers of the RPA and unarmed civilians. However, others killed during these cordon-and-search operations appeared to have been unarmed civilians who were not actively participating in the hostilities.

30. Following these incidents, a high-level government delegation, including the Vice-President, the Commander of the Military Police and the Military Prosecutor-General, travelled to Gisenyi to verify the incidents. As of 12 September, a total of 29 RPA soldiers, including a battalion commander and other officers, had been arrested for various crimes allegedly committed during those incidents, including failure to prevent the loss of life, excessive use of force, and looting.

B. Detention

31. Information from various sources showed that the detainee population in the 19 central prisons totalled 77,349 as of 31 December, compared with around 72,000 in August. This marked an overall increase of around 14,000 detainees in central prisons since January 1997. HRFOR estimated the detainee population in communal detention centres and gendarmerie brigades (but excluding military and sector-level civilian detention centres) at around 48,863.

32. Conditions of detention remained poor in the majority of the communal detention centres (cachots) visited by human rights field officers. Many of the cachots lacked adequate light and ventilation and were severely overcrowded. Shortages of food, lack of access to water and health care, and inadequate hygiene were widely noted.

33. However, in some places, overcrowding was somewhat eased due to the work of itinerant judicial investigative personnel (Groupes mobiles) deployed by the Ministry of Justice to carry out preliminary investigations into genocide cases and open case files for detainees who did not have them. Their work led in some cases to the provisional release of persons against whom there was insufficient evidence or who fell into certain "vulnerable" categories (e.g. elderly persons and minors), and to the transfer to central prisons of others whose case files were completed. As of late October, an increased use of chambres du conseil (pre-trial detention hearings in front of a judge, a procedure provided for under Rwandan law) led to the provisional release of some persons against whom there was deemed insufficient evidence as to "serious indications of guilt". The Government increased its efforts in these areas to comply with article 1 of Law No. 9/96 of 8 September 1996 Relating to

Modifications to the Criminal Procedure Code, which established 31 December 1997 as the deadline by which all detainees in detention at the date of the law's publication should have had their arrests recorded, and provisional arrest warrants issued, in respect of them, and have appeared before a judge. 9/ However, as this deadline was not met, a new law was published on 31 December 1997 which extended the deadline for the regularization of detention to 31 December 1999 for persons in detention as at 31 December 1997.

34. The Field Operation noted structural improvements in some detention centres. For example, in Mugesera communal detention centre in Kibungo prefecture, four small cells were closed down following the rehabilitation of a more spacious communal building. Over 100 detainees were moved to the new building.

35. Serious deficiencies in hygiene and access to medical care exacerbated by severe overcrowding in the communal detention centre of Rusatira commune, Butare prefecture, reportedly contributed to the deaths of 54 detainees between May and August 1997. The Field Operation has continued to raise these concerns with local authorities who, as of December, were organizing a transfer of detainees to central prisons, a measure which was expected to alleviate the overcrowding.

C. Genocide trials

36. As regards genocide trial proceedings, on 27 December 1996 two and a half years after Rwanda suffered the genocide and civil war - the first court proceedings against persons accused of genocide and crimes against humanity were opened pursuant to Basic Law No. 08/96 of 30 August 1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990 ("Genocide Law"). Between 3 January and 31 December 1997, the Specialized Chambers of the Courts of First Instance handed down judgements in respect of 322 defendants. 10/ By 5 December 1997, 321 trials had been completed in which the court sentenced 111 persons to death, 109 persons for life imprisonment, 26 persons for imprisonment of more than 12 years, 32 persons for imprisonment of between 7 and 11 years, and 24 persons for imprisonment of 6 years or less. 11/ There were 19 acquittals and 57 confessions. At the time of the writing of this report, no executions had been carried out.

37. The steps taken towards bringing the perpetrators of the genocide to justice and compensating civil claimants, pursuant to the relevant provisions of the Criminal Procedure Code, are to be welcomed. Progress has been made since the commencement of the genocide trials, including an increased number of witnesses testifying in court, an increase in legal representation, a growing use of the Confession and Guilty Plea Procedure, and an increase in the granting of reasonable requests for adjournment.

38. However, several aspects of the proceedings remain cause for concern, in particular the lack of full respect for some fair trial guarantees as provided for by Rwandan law and under article 14 of the International Covenant on Civil and Political Rights; including the general lack of opportunity for defendants without lawyers to question witnesses. Although legal representation has

increased overall, security and logistical constraints have limited representation of persons in certain outlying areas, notably in the jurisdictions of Cyangugu, Gisenyi, Kibuye, Ruhengeri and Rushashi. These shortcomings can be particularly serious given the fact that if found guilty, under Rwandan law, the accused may face the death penalty.

39. While the number of persons accused of crimes of sexual violence has increased slightly, in general very few defendants have been charged with such crimes, although their occurrence during the genocide is well documented.

D. Military justice system

40. The Field Operation has closely monitored military trials to assess the extent of accountability for abuses committed by State agents since the end of the 1994 genocide. In the December 1996 trial of the commander of RPA troops during the Kibeho incident of 18-23 April 1995, in the course of which a large number of unarmed civilians were killed at a camp for internally displaced persons, the Military Court found the commander not guilty of murder and not guilty of the unauthorized use of arms. However, the court found him guilty of failure to "prevent criminal acts through immediate action" and sentenced him to 18 months' imprisonment and a fine of 8,750 Rwandan francs. As the defendant had spent an equivalent amount of time in pre-trial custody, his prison sentence was considered to have been served. He is currently the commander of the RPA's 402nd Brigade (covering Greater Kigali).

41. From 1 to 2 September 1997, court proceedings were opened in connection with the events of 11 and 12 September 1995 in Kanama commune, Gisenyi prefecture, during which over 100 civilians were killed in an RPA operation. Four RPA officers (two majors and two second lieutenants) accused of murder and of complicity in murder were acquitted of those charges by the Military Court, but found guilty of the lesser charge of failure to assist persons in danger. They were sentenced on 12 September 1997 to imprisonment of 28 months each, and ordered to pay costs. No charges were brought against the brigade commander responsible for Gisenyi and Ruhengeri prefectures at the time of the incident, who was the commanding officer of the four who were tried. That officer was suspended from his duties after the September 1995 incident, but following the trial was appointed Commander of the RPA's 301st Brigade (covering Butare, Cyangugu and Gikongoro prefectures).

42. On 15 and 16 November, the Military Court heard the case of an RPA major who had commanded a military search operation in Kigombe commune, Ruhengeri prefecture, on 3 March 1997 in which at least 150 civilians were killed. The major was charged with involuntary homicide and non-assistance to persons in danger. Five other RPA and gendarmerie officers were tried with him on charges of complicity in murder and non-assistance to persons in danger. On 1 December, the court found all six defendants guilty as charged. The major was sentenced to 44 months' imprisonment and payment of costs, while the other five officers were sentenced to 5 years' imprisonment and costs.

43. HRFOR awaits the completion of investigations and the commencement of military trials in about a dozen other cases of significant reported RPA

abuses which were well documented by HRFOR and encourages the Government to respect the international standards concerning the independence of the judiciary.

III. ACTIVITIES OF THE HUMAN RIGHTS FIELD OPERATION IN RWANDA SINCE MARCH 1997

44. In accordance with its current mandate, the Field Operation carries out investigations into alleged violations of human rights and humanitarian law; monitors the ongoing human rights situation; cooperates with other international agencies in charge of re-establishing confidence and thus facilitates the rebuilding of civil society; and implements programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice.

45. Over the past few months, the Field Operation has focused its monitoring activities on the human rights situation in the context of the rise in insurgency and counter-insurgency activities. In reports to and meetings with representatives of the Government of Rwanda, the Operation informs the Government of possible human rights violations and encourages it to take appropriate measures to investigate and to impose sanctions where necessary. The Operation regularly proposes specific recommendations to the Government with a view to rectifying shortcomings in its observance of international human rights standards. In addition to monitoring the human rights situation in Rwanda, the Operation has been carrying out the activities described below.

A. Current structure and state of operations of HRFOR

46. The current structure of the Field Operation is the result of the reorganization and the reorientation of the mission following the deterioration of the security situation, including the 4 February 1997 killing of five HRFOR staff members. The resulting United Nations security regulations have limited the presence of human rights field officers in the four western prefectures of Rwanda and have required HRFOR to modify its methodology of information-gathering, relying in many cases on witness testimony without conducting on-site investigations.

47. The headquarters of the Field Operation is composed of several units, namely the Office of the Chief of Mission, the Security and Communications Unit, the Operations and Documentation Unit, the Legal Unit, the Education and Promotion Unit and the Administrative Unit.

48. The Operations and Documentation Unit undertakes reporting and analysis on the current human rights situation based on information and reports provided principally by the Operation's field teams. The Unit is also in charge of the day-to-day management of the field teams. The Special Investigations Sub-Unit supports field teams through its investigation of particularly serious incidents and provides training on investigative techniques for human rights field officers.

49. The Legal Unit concentrates on improvements in the administration of justice and in the status and condition of genocide survivors, undertakes genocide trials monitoring and promotes improvements in penal administration.

The Legal Unit seeks to enhance conformity of the legal system of Rwanda with international human rights standards through the promotion of legal reform. The Unit also carries out training of the national gendarmerie and the communal police, works to augment and strengthen the capacity of human rights institutions through projects of technical cooperation in the field of human rights, and provides support to prosecutors' offices to enhance the effectiveness of human rights norms in the context of the judicial system of Rwanda. As regards institution building, the Legal Unit focuses on supporting the development of the Rwandan National Human Rights Commission 12/ and the Parliamentary Human Rights Commission, and works closely with the Special Representative on Rwanda, whose mandate, created by the Commission on Human Rights in its Resolution 1997/66, involves these aspects.

50. The Education and Promotion Unit focuses on raising public awareness of specific human rights concerns. The Unit provides support to the Legal Unit in organizing information campaigns on fair trial guarantees, arrest and detention procedures, independence of the judiciary and popular access to effective remedies for human rights violations, for example on procedures regarding the filing of civil claims in the genocide trials, in collaboration with roving theatre troupes managed by local human rights NGOs which perform short plays, with public debate following, on these topics and on other issues such as national reconciliation and the rights to life and physical integrity. Through its activities, the Unit attempts to improve the position of vulnerable groups, such as women and children, and to increase the capacity of local human rights non-governmental organizations to promote and protect human rights. Another goal of the Unit is to foster a human rights culture within the school system and the public administration of Rwanda through the development and dissemination of human rights material in Kinyarwanda, English and French.

51. The Security and Communications Unit, vital to the safe and secure functioning of the Field Operation, carries out the following activities: liaison with security officers of other United Nations agencies; liaison with security officials of the Government of Rwanda; development of systems and procedures for the security of the Operation; ongoing evaluation of security threats and risks to the Operation; training of staff to increase security awareness; and ensuring the security of personnel, premises and documentation.

52. As of January 1998, HRFORs field teams operate out of five regional suboffices and one smaller field office, through which all field activities are organized and carried out. These are:

Cyangugu field office (covering Cyangugu prefecture)

Butare suboffice (covering Butare and Gikongoro prefectures)

Kibungo suboffice (covering Kibungo and Umutara prefectures)

Gisenyi suboffice (covering Gisenyi and Ruhengeri prefectures, based in Gisenyi town when the security situation permits)

Gitarama suboffice (covering Gitarama and Kibuye prefectures, based in Kigali)

Kigali suboffice (covering Byumba, Kigali Rural and Kigali Ville prefectures).

53. Field officers collect information on the human rights situation through a combination of on-site monitoring activities and, where prevailing security constraints preclude HRFOR field visits, interviews with eyewitnesses and other sources knowledgeable about possible human rights violations and breaches of international humanitarian law. Field officers raise specific cases directly with local authorities, as appropriate. In three out of the four prefectures in United Nations security phase III - Cyangugu, Gisenyi and Ruhengeri - field officers conduct regular visits to all prefectural capitals, but travel outside of the capital town only in exceptional circumstances, and with the special permission of the Chief of Mission and the United Nations Designated Official for Security. Due to security and logistical constraints, Kibuye prefecture has not been visited by HRFOR since March. In the other eight prefectures of Rwanda, currently under United Nations security phase II, monitoring activities regularly take place at the commune level in many areas, under armed escort where required. In addition to monitoring the human rights situation, field officers observe and report on the functioning of the justice system, particularly the genocide trials, and implement a range of human rights promotion and technical assistance projects.

54. The High Commissioner has appointed Mr. Gérard Åke Fischer, former head of Civil Affairs of the United Nations Transitional Authority in Eastern Slavonia, as Chief of the Field Operation, to take up his new functions in February 1998. The structure of HRFOR will be reviewed and, if necessary, further adapted to bring it into line with current operational exigencies, taking into full account the recommendations of Mr. Ian Martin, which the High Commissioner presented to the General Assembly at its fifty-second session (A/52/486/Add.1/Rev.1). In addition, the Government of Rwanda has indicated its wish to participate with the High Commissioner in a joint review of the functions and role of HRFOR in order to identify whether any further reorientation may be needed.

55. As of the end of December 1997, the Operation counted 70 international staff members deployed in-country, as compared with 81 at the end of June, 89 at the end of March and 137 at the end of January.

B. Projects in technical cooperation in the field of human rights

56. Since the beginning of 1997, the Field Operation has taken a more comprehensive approach to its project planning on the basis of an action programme developed by the Legal Unit for the calendar year. This structured programme of technical cooperation in the field of human rights involves the principal elements of the administration of justice and legal reform, penitentiary administration, training and institutional support, and assistance to genocide survivors and vulnerable groups.

57. The programme is designed to strengthen the independence of the judiciary; secure improvements in the performance of courts and personnel at all levels of the judicial system; secure improvements to Rwandan national law and practice in compliance with international standards; evaluate the

performance of the Rwandan criminal justice system within the framework of the prosecution before domestic courts of persons accused of genocide and other crimes against humanity committed in Rwanda since 1 October 1990; increase public awareness of Rwandan laws and judicial practices and procedures, including those related to the promotion and protection of human rights; serve as a reliable source of information on the Rwandan justice system; strengthen Rwandan institutions and enhance their capacity to contribute effectively to the promotion and protection of human rights in Rwanda; make human rights documents and materials available to HRFOR staff and to the general public; secure improvements in conditions of detention in Rwandan prisons and local detention centres; reduce, and if possible eliminate, overcrowding in places of detention and imprisonment; and improve the performance of the penitentiary administration.

58. To implement these objectives, the Field Operation produced a global technical cooperation project document which spells out the activities requested by potential beneficiaries of the project, particularly government officials at the national and local levels (notably those of the Ministries of Justice, Defence, and the Interior), authorities of the Transitional National Assembly and leaders of the local non-governmental community.

59. The project covers four main areas of activity: (i) human rights education and training for the judiciary, the military, the national gendarmerie, the police, prison administration personnel, other civil servants and members of local human rights non-governmental organizations; (ii) capacity-building in the sectors of civilian and military justice; (iii) capacity support for human rights non-governmental organizations; and (iv) the popularization of human rights through formal and informal education and promotion activities.

60. In support of security and law enforcement officials, human rights field officers participated in the training of 150 new judicial police inspectors and 900 new communal police constables. In continuation of its series of similar seminars at both the national and prefectural levels during 1996 and early 1997, the Operation organized a seminar in collaboration with the Rwandese Patriotic Army on the role of the RPA in the protection and promotion of human rights in the post-genocide society (Butare prefecture, 17-20 September).

61. On 24 April, the Field Operation launched a series of seminars for judicial personnel organized jointly with UNHCR, the Ministry of Justice and the Supreme Court, with funding from UNHCR. The series has covered 10 of the country's 12 jurisdictions of courts of first instance. These seminars have been intended to strengthen the capacity and improve the performance of all public officials - judicial, administrative, military and law enforcement - involved in the administration of justice at the prefectural level.

62. Under the same programme, the Field Operation conducted a seminar in April for all levels of military justice personnel in collaboration with the Ministry of Defence. Instruction to newly appointed members of the Military Court and the Council of War focused on substantive military offences,

criminal procedure in the military courts and substantive and procedural aspects of the law governing the trial of persons accused of genocide and related offences.

63. From 4 to 6 September, a conference on the role and responsibilities of the National Assembly in the protection and promotion of human rights was organized jointly by the Field Operation and the Transitional National Assembly. The Field Operation provided information on human rights tenets to reinforce the capacity of the Assembly in this regard. All of the deputies of the Transitional National Assembly attended, as well as other high-level government officials and representatives of NGOs.

64. The Field Operation organized two training sessions for Rwandan human rights NGOs (Kigali, 6-7 and 21-22 October) on investigative methods, reporting techniques and the principles of international humanitarian law in the context of present-day Rwanda.

65. The Field Operation pursued its ongoing programme of human rights education and promotion through projects carried out jointly by headquarters staff, field officers and Rwandan partners, including local and national authorities, and human rights NGOs. The main objective of these initiatives was to create widespread awareness of human rights among the population in general and certain target groups in particular, including civil servants, the military, women, youth representatives, teachers and students. Special emphasis was put on rights relating to the genocide trials, such as fair trial guarantees and procedures for civil claimants. The Operation organized seminars, conferences and workshops, continued to sponsor two human rights theatre troupes and produced video cassettes, playing cards, banners and radio plays on various human rights themes.

C. Response to the genocide and vulnerable groups

66. The Field Operation continued to pay particular attention to the plight of the survivors of the 1994 genocide and of certain particularly vulnerable groups. It focused its activities on three main areas: (i) providing assistance to certain local communities wishing to document and publish the history of the genocide in their communes; (ii) increasing awareness of the Rwandan legal system among genocide survivors; and (iii) monitoring and reporting on the current human rights situation of genocide survivors and vulnerable groups.

67. A number of programmes designed to address genocide survivors and particularly vulnerable groups have been conducted on an ongoing basis. For example, in the first half of August 1997, the Field Operation participated in a seminar on the management of data on the genocide collected by Ibuka (the genocide survivors' organization), the Collective of Human Rights Leagues and Associations (CLADHO), International Alert and the Human Rights Information and Documentation System (Huridocs), in Gitarama prefecture, for Rwandan and foreign organizations working on documenting the genocide. From 14 to 16 November, the Field Operation held a seminar entitled "Support for Victims' Rights" for approximately 40 members of genocide survivors' associations from throughout the country. The principal objective of the seminar was to increase genocide survivors' knowledge of the Rwandan judicial system with

regard to the genocide trials in general, and the procedure to file for civil damages in particular. HRFOR also worked with local groups to raise awareness of civil claim procedures among survivors in all communes of Kibungo prefecture.

D. Other

68. The Special Representative of the Commission on the situation of human rights in Rwanda of the Commission on Human Rights, Mr. Michel Moussalli, visited Rwanda from 28 July to 4 August, from 1 to 8 November, and from 19 to 25 January and met with officials of the Government of South Africa on 26 and 27 January 1998 in Pretoria to follow up on the establishment of an independent human rights commission in Rwanda and to further review the human rights situation in preparation for his report to the General Assembly. In the course of these missions, Mr. Moussalli met with government officials including the President, the Vice-President and Minister of Defence, the Prime Minister, the Minister of the Interior, Communal Development and Resettlement, the Minister of Youth, Sports, Culture and Vocational Training and the President of the Transitional National Assembly, as well as with members of the diplomatic community and representatives of the Field Operation, other United Nations agencies and non-governmental organizations.

69. From 6 to 11 October, Mr. Ian Martin, former HRFOR Chief of Mission, visited Rwanda at the request of the High Commissioner for Human Rights to evaluate the activities of the Field Operation in consultation with the Government of Rwanda and to propose suggestions for the Field Operation's role in the future. Mr. Martin met with ministers and high-level government officials, including the President and Vice-President of Rwanda, representatives of United Nations agencies and non-governmental organizations as well as HRFOR staff. His findings were presented to the General Assembly as an addendum to the High Commissioner's full report (A/52/486).

70. From 26 October to 1 November, the United Nations Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, visited Rwanda to study the issue of sexual violence against women in armed conflicts and the situation of women victims of violence in post-conflict situations. To this end, she met with representatives of the Government and of non-governmental and women's organizations. The report on her visit is contained in document E/CN.4/1998/54/Add.1.

71. The High Commissioner for Human Rights visited Rwanda from 4 to 7 December and discussed the worrying deterioration in the overall security and human rights situation as well as the role and future of the Field Operation in meetings with high-level officials, including the President, the Vice-President and Minister of Defence, and the Ministers of Justice and of the Interior. She also met with members of the diplomatic community, heads of other United Nations agencies and programmes operating in Rwanda, and non-governmental organizations and Field Operation staff.

72. Subsequently, the High Commissioner discussed at meetings of the Executive Committee on Humanitarian Affairs in New York, the United Nations Development Group and the task force on the Great Lakes region how

United Nations agencies and programmes could adopt a more effective rights-based and coordinated approach to the problems faced by Governments and peoples in the Great Lakes area.

IV. CONCLUDING OBSERVATIONS

73. The High Commissioner remains seriously concerned about the security and human rights situation in Gisenyi and Ruhengeri prefectures related to escalating attacks by armed groups operating there. The means and methods of military operations carried out in these prefectures in response to insurgent attacks are also of great concern in view of the significant numbers of the elderly, women and children killed in circumstances strongly suggesting patent disregard for basic standards of international human rights and humanitarian law.

74. The right of the Government of Rwanda to protect its citizens and others present on its territory from attacks by armed groups is fully recognized and the security threat posed by these armed groups is not to be ignored or underestimated. However, international human rights and humanitarian law establishes minimum standards which apply in all circumstances, in particular, those norms of customary international human rights law from which no derogation is permitted even in time of public emergency, and as regards international humanitarian law, the provisions of article 3 common to the four Geneva Conventions of 12 August 1949.

75. The High Commissioner calls upon the international community to strengthen its multilateral and bilateral efforts in assisting the Government of Rwanda to protect the civilian population of north-west Rwanda and to put an end to the ongoing violence whose frequency, intensity and extent have increased.

76. The decision by the Rwandan authorities to open legal proceedings against high-ranking RPA officers in connection with the incidents of 18-23 April 1995 at Kibeho (Gikongoro prefecture), 12 September 1995 in Kanama commune (Gisenyi prefecture) and 3 March 1997 in Kigombe commune (Ruhengeri prefecture), all three of which resulted in numerous civilian casualties, is to be noted as a very positive development. In addition, the speedy arrest of RPA officers and soldiers accused of participating in killings and looting in Kanama commune in August 1997 is commendable. However, various aspects of the military justice system of Rwanda remain of concern. HRFOR has submitted its observations to the Government of Rwanda, including recommendations on measures to guard and strengthen the impartiality and independence of the judiciary, including the military justice system, as required by the relevant international standards.

77. The Government is encouraged to take steps to prevent the excessive use of force by the security forces, including the RPA, gendarmerie and communal police, particularly to ensure that there is full respect for the fundamental rights to life, security and personal integrity. In this regard, all members of the security forces should be trained fully in the relevant international standards on the use of force and firearms. The Government of Rwanda should ensure that RPA soldiers and gendarmes are well trained in the use of force and firearms during military operations and that they receive instruction in

international humanitarian law, in accordance with the country's obligations as a party to the Geneva Conventions. All members of the security forces who exercise police functions, including the military, gendarmerie, and the communal police, should likewise be trained fully in the use of force and firearms during law enforcement duties, as set forth in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials. The High Commissioner's Field Operation in Rwanda on numerous occasions has indicated its readiness to assist the Government with the comprehensive training of military and police officials in the full observance of international human rights standards relevant to the carrying out of their duties.

78. The Government of Rwanda should investigate and take appropriate disciplinary and legal action regarding all credible allegations that members of the security forces and other State agents have violated domestic law and international human rights or humanitarian standards, particularly regarding the right to life. In this connection, the High Commissioner encourages the Government to ensure that competent authorities conduct thorough, prompt and impartial investigations into these and other killings which may have amounted to violations of the right to life by agents of the State. Based on such investigations, appropriate disciplinary measures, including the application of relevant penal sanctions, should be taken against those members of the security forces found guilty of violating the right to life. In accordance with principle 15 of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, witnesses to possible violations should be protected from violence, threats of violence, or any other form of intimidation, and those State agents potentially implicated in such cases should be suspended from their duties until a definitive investigation by competent authorities has been completed and the offenders have been brought to justice.

79. The Human Rights Field Operation in Rwanda remains available to assist the Government of Rwanda with the provision of information that could relate to official investigations into possible violations of human rights and humanitarian law.

80. The High Commissioner welcomes the continuation of genocide trials and notes the progress made during the reporting period, including the increased number of witnesses testifying in court; the improvement in detainees' access to case files; and the increase in the granting of reasonable requests for adjournments. She remains concerned, however, about several aspects of the proceedings, in particular the lack of full respect for some fair-trial guarantees as required by Rwandan law and article 14 of the International Covenant on Civil and Political Rights, including the lack of legal representation in a number of trials and the general lack of respect of the right of the accused to cross-examine witnesses accusing them. The Government is therefore encouraged to take further steps to ensure full respect of fair-trial guarantees, including the right to legal representation and the right of the accused to cross-examine witnesses.

81. In view of the fact that if found guilty, a convicted person may face the death penalty, the High Commissioner urges a moratorium on the use of the death penalty in conformity with Commission resolution 1997/12 on the question of the death penalty.

82. The Government of Rwanda has taken steps over the last year to improve detention conditions in a number of central prisons and communal detention centres, including the above-mentioned institution of the Groupes mobiles to compile detainee case files. However, the High Commissioner remains concerned about the extreme overcrowding and poor conditions still noted in many places of detention, particularly in communal detention centres. She suggests that the Government, with the assistance of the international community, consider alternatives to detention. The High Commissioner also continues to recommend efforts to encourage the voluntary use, in appropriate cases, of the Confession and Guilty Plea Procedure provided for in the Genocide Law. The Human Rights Field Operation has repeatedly indicated its readiness to assist the judiciary in bringing its practice into better conformity with international human rights standards.

83. The High Commissioner also wishes to draw attention to a number of other areas in which the Government of Rwanda could be assisted in taking appropriate remedial action as promptly as possible to ensure the full respect of human rights in the country, namely, to continue to strengthen the capacity of the judicial system, including the military prosecutor's office and the military courts, and to provide HRFOR with full and confidential access to all persons detained in military detention centres. HRFOR has initiated a number of project proposals in these areas and the High Commissioner encourages the Government to work more intensively with the Operation to address the challenges.

84. The High Commissioner wishes to emphasize that the Field Operation was conceptualized and designed to support the Government of Rwanda's efforts in improving the human rights situation and fostering national reconciliation. In this context, the High Commissioner shares the view that human rights are most effectively realized when pursued in their totality. Sustained respect for civil and political rights in Rwanda is best fostered alongside the comprehensive promotion of economic, social and cultural rights.

85. While the Field Operation has not until now focused on economic, social and cultural rights, it has been active in the organization of seminars for local NGOs and other associations involved in economic development, performances by human rights mobile theatre troupes on these rights, the development and implementation of a human rights curriculum in primary and secondary schools, the training of teachers in the dissemination of human rights standards, the organization of cultural activities in collaboration with the Rwandan Ministry of Youth, Culture, Sport and Vocational Training, and other mass awareness campaigns. In addition, the Field Operation continues to work with a number of United Nations agencies and programmes, including UNESCO, UNDP, UNICEF and WHO, to foster respect for economic, social and cultural rights in Rwanda in areas falling within each of their respective mandates.

86. As a participant in the Executive Committee on Humanitarian Affairs, the High Commissioner continues to actively support the development of a more coherent and comprehensive strategy for the better integration of human rights protection and promotion in the overall United Nations efforts in the region.

87. Moreover, the High Commissioner intends to review the Field Operation's role, priorities and functions, so that the totality of human rights norms, civil and political rights together with economic, social and cultural rights, can be protected and promoted in a progressively more effective and comprehensive manner. In this regard, the High Commissioner welcomes the active participation of the Government in the review and has requested the incoming Chief of Operation, Mr. Gérard Fischer, to start the process upon the assumption of his duties in February 1998.

88. Finally, the High Commissioner appreciates the cooperation the Government of Rwanda has extended to the Special Representative of the Commission on the situation of human rights in Rwanda. One of the elements of the Special Representative's mandate concerns the creation of an independent national human rights commission in Rwanda. In the December 1997 Official Gazette of the Republic of Rwanda appears Presidential Order No. 26/01 of 11 November 1997 Establishing the National Human Rights Commission. However, the Government of Rwanda has indicated that the issuance of the Presidential Decree is only a preliminary stage in the process of creating the commission and that it intends to submit the Decree to the Transitional National Assembly for full debate in that forum during which time modifications may be introduced. The High Commissioner encourages the Government of Rwanda to continue to work closely with the Special Representative to ensure that the creation and functions of the commission are in line with the relevant international human rights standards.

Notes

1/ The Commission was created on 1 July 1994 by the Security Council to determine individual responsibility for serious breaches of human rights and humanitarian law. Following the completion of its work and the submission of its reports to the Secretary-General, it was dissolved on 30 November 1994.

2/ With the establishment in Kigali of the Office of the Deputy Prosecutor of the International Criminal Tribunal for Rwanda (ICTR), responsibility for these investigations was passed over to the ICTR.

3/ Figure from information gathered through HRFOR field visits and interviews with local judicial officials and non-United Nations international organizations working in the prison and detention sector.

4/ For details on the sentences, see section III.C below.

5/ Excluding February figures, which were unavailable due to the temporary relocation of human rights field officers to Kigali from all other parts of the country.

6/ These include soldiers of the RPA and members of the communal police force.

7/ Accounts of the number of victims varied considerably. Official Rwandan government sources stated that 312 persons were killed, whereas refugee camp leaders and the Government of the Democratic Republic of the Congo, in statements unconfirmed by other sources, indicated that 1,643 persons had been killed. HRFOR investigations into this incident were continuing as of January 1997.

8/ In the view of government officials, these attacks are carried out by persons determined to continue and complete the 1994 genocide and would be better referred to as "attacks by genocidal forces" rather than as "ethnically motivated attacks".

9/ Unless the arrest warrant was issued within the last three months of 1997, in which case they must appear before a judge within 90 days of the issuance of the warrant.

10/ Human rights field officers have been able to attend 66 per cent of the trials. For the trials which HRFOR staff were not able to attend, HRFOR received information from the Ministry of Justice and non-governmental organizations as well as court and prosecution staff.

11/ The average number of defendants per trial is 3.2.

12/ Presidential Order No. 26/01 of 11 November 1997 for the creation of a Rwandan National Commission on Human Rights was published in the Official Gazette on 1 December 1997.